

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TE-170027

PENALTY AMOUNT: \$1,500

Big Woody Limos, LLC
108 5th Ave S. #317
Seattle, WA 98104

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code (WAC) 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion carriers to comply with Title 49 CFR Part 382 – Controlled Substances and Alcohol Use and Testing, Part 391 – Qualification of Drivers, and Part 395 – Hours of Service of Drivers.

Revised Code of Washington (RCW) 81.04.530 allows penalties of five hundred dollars for each violation of Title 49 CFR Part 382. RCW 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Part 391 and Part 395. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On December 6, 2016, Commission Motor Carrier Investigator Wayne Gilbert conducted a compliance review of Big Woody Limos, LLC (Big Woody Limos or company) and documented the following violations of critical regulations:

- **Two violations of CFR 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** Big Woody Limos allowed employees Mark Dixon and Shawn Moody to operate a commercial motor vehicle before receiving a negative pre-employment controlled substance test result.
- **Two violations of CFR 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** Big Woody Limos failed to maintain driver qualification files for two of its drivers, Victor Graves and Don Mayor.
- **Three violations of CFR 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file.** Big Woody Limos failed to ensure a driver's abstract was maintained in the driver qualification files of Kelly Ryan, Shawn Moody, and Mark Dixon.
- **Three violations of CFR 395.8(a) – Failing to require driver to make a record of duty status.** Big Woody Limos allowed employees Mark Dixon and Don Mayor to drive without making a record of duty status while not under short haul exemption on three separate occasions between June 18 and October 15, 2016.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violation is to the public.** The violations noted are very serious and potentially harmful to the public. Companies that allow a driver to operate a commercial motor vehicle prior to receiving a negative pre-employment controlled substance test result, or that fail to document drivers' hours of service, put the traveling public at risk. An unknown pre-employment controlled substance test result, or a potentially fatigued driver, present very serious safety concerns.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission staff's previous technical assistance; and
 - Whether there is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

Big Woody Limos applied for charter and excursion authority in April 2012. In the application, company president Devin Luther acknowledged his responsibility to understand and comply with applicable motor carrier safety rules and regulations.

On May 2, 2012, Commission staff conducted a new entrant visit and provided technical assistance with regard to safety regulations and provided the company with a safety guide.

On June 5, 2013, Commission staff conducted a compliance review of Big Woody Limos from which the company received a satisfactory safety rating. During the compliance review staff provided additional technical assistance and noted violations of CFR Parts 391, 395, and 396.

The company knew, or should have known about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** The company's staff members were cooperative throughout the entire investigation. The company expressed a desire to maintain compliance with motor carrier safety rules and regulations.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Staff is unaware of whether Big Woody Limos has taken any action to correct these violations.
6. **The number of violations.** For a company this size, the number of critical violations is notable.
7. **The number of customers affected.** The company traveled 4,250 miles and reported \$96,609 in gross revenue for 2015, which suggests that a moderate number of passengers

and other members of the traveling public were potentially at risk by these safety violations.

8. **The likelihood of recurrence.** The Commission does not know if the company is likely to repeat these violations.
9. **The company's past performance regarding compliance, violations, and penalties.** Big Woody Limos has had one previous compliance review since it was granted operating authority in 2012. The company has had similar violations, but has no history of penalties.
10. **The company's existing compliance program.** The company has no formal compliance program.
11. **The size of the company.** Big Woody Limos operates two commercial motor vehicles and employs five drivers between its Seattle and Vancouver locations. The company reported \$96,609 in gross revenue for 2015.

Some of the violations noted are first-time violations, but the Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.¹ The Commission generally will assess penalties per type of violation, rather than per occurrence, for other first-time violations of critical regulations that do not meet the criteria for mandatory penalties. The Commission will assess penalties for any repeat violations of critical regulations found in future compliance investigations, including for each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Big Woody Limos \$1,500 for violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, which adopts CFR Parts 382, 391 and 395, calculated as follows:

- Two violations of CFR 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result. These are first-time violations of fundamental safety requirements, and thus the Commission assesses penalties at the statutory amount of \$500 per occurrence, for a total of \$1,000.
- Two violations of CFR 391.51(a) – Failing to maintain a driver qualification file for each driver it employs. These are first-time violations at the penalty amount of \$100 per violation type, for a total of \$100.
- Three violations of CFR 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file. These are first-time violations at the penalty amount of \$100 per violation type, for a total of \$100.

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- Three violations of CFR 395.8(a) – Failing to require driver to make a record of duty status. These are repeat violations from the June 2013 compliance review at the penalty amount of \$100 per occurrence, for a total of \$300.

This information, if proved at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty assessment through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact concerning the violation(s) require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for any or all of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation(s) or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Olympia, Washington, and effective February 8, 2017.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-170027.

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed. I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violation occurred and enclose \$ _____ in payment of the penalty.
2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”